

STORAGE NAME: h1495a.brc

DATE: April 8, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1495

RELATING TO: Motor Vehicle Warranty Enforcement Act

SPONSOR(S): Representative Carlton

STATUTE(S) AFFECTED: ss. 681.101, 681.102, 681.103, 681.104, 681.109, 681.1095, 681.1096, 681.1097, 681.113, 681.114, and 319.14, F.S.

COMPANION BILL(S): SB 2062 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS
- (3) CIVIL JUSTICE & CLAIMS
- (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
- (5)

I. SUMMARY:

This bill makes changes to the Motor Vehicle Warranty Enforcement Act (Act), passed by the 1983 Legislature, and commonly known as the Florida Lemon Law. The purpose of the Act is to allow consumers with repetitive warranty repairs to seek refunds or vehicle replacement after reasonable repair attempts have been made. The bill makes numerous changes to the Act, such as extending the Lemon Law rights period to 24 months, expanding consumer options for replacement vehicles, clarifying several recreational vehicle (RV) specific provisions, and revising procedures for screening dispute eligibility before the arbitration board.

The bill also establishes a pilot program for the resolution of complaints relating to recreational vehicle repairs. The Attorney General Department of Legal Affairs will qualify and monitor a four-year privatized mediation and arbitration program for disputes relating to RVs acquired on or after October 1, 1997.

This bill does not appear to have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Motor Vehicle Warranty Enforcement Act gives motor vehicle owners and lessees significant rights against a manufacturer, defined as one who builds motor vehicles or a person who builds special bodies on vehicle chassis. Motor vehicles are defined as new vehicles propelled by other than muscular power, but excludes the living facilities of recreational vehicles. The Lemon Law rights period begins at the time of original vehicle delivery and continues for 18 months or 24,000 vehicle miles, whichever occurs first; manufacturers may be held responsible for vehicle repair if notified during the rights period. Manufacturers are currently required to provide a written statement of Lemon Law rights to the consumer at vehicle delivery.

In the event a defect or nonconformity substantially impairs a vehicle's value, use or safety, and continues after a reasonable number of repair attempts, the manufacturer shall provide to the consumer a refund or replacement vehicle. A replacement vehicle is a vehicle which is either identical or reasonably equivalent to the replaced vehicle. A reasonable attempt to conform the vehicle with its warranty is presumed when a particular warranty nonconformity continues after four repair attempts or the vehicle has been out of service for a total of 30 days or more. In the event that a manufacturer is given a fourth attempt to repair a nonconformity, the manufacturer shall have 10 days from delivery of the vehicle at a designated repair facility to conform the vehicle to its warranty.

A manufacturer may have its dispute-settlement procedure certified by the Division of Consumer Services (Division) of the Department of Agriculture and Consumer Services. A consumer currently has six months after the expiration of the Lemon law rights period to file a claim with a manufacturer's certified procedure. If the consumer seeks arbitration, a request must be made within six months after the expiration of the Lemon Law rights period.

The Florida New Motor Vehicle Arbitration Board (Board) hears disputes approved by the Division. The Attorney General (AG) is authorized to establish as many boards as necessary, each of which shall consist of six members, although two additional members may be appointed if necessary. In addition, a consumer or manufacturer may appeal the board's decision to the circuit court.

A consumer seeking relief under the Act may have the case brought before state arbitration if the manufacturer fails to either repair the vehicle under certain guidelines or resolve the dispute through the manufacturer's settlement program. In the event that a consumer's dispute is arbitrated favorably by the Board, the manufacturer must provide a replacement vehicle or a refund in addition to expenses incurred by the consumer. The Board's decision may be appealed to a state court. During the 1995-96 fiscal year, nearly 1,000 arbitration applications were determined eligible for arbitration under the Act.

If a vehicle does not conform to its warranty and the problem is reported to the manufacturer or its agent within the first 12 months or 12,000 miles of the Lemon Law rights period, the manufacturer or servicing agent is required to make repairs at no cost to the consumer. If the consumer reports a problem after the first 12 months or 12,000

miles, the manufacturer is still required to make repairs, but may charge the consumer if the warranty so provides.

Under chapter 319, F.S., a vehicle that has been repurchased pursuant to a settlement, defined as an agreement reached after review by an informal procedure, may not be sold or exchanged unless certain disclosure requirements are followed.

Although the Lemon Law program has led to over \$100 million in refunds and vehicle replacements since its inception, several provisions are difficult to comply with for some types of consumers, particularly the owners of recreational vehicles. These vehicles are typically assembled by at least two, and as many as six manufacturers. The purchase price for these vehicles is generally several times that of other vehicles, and discovery of defects may be hindered by far less frequency of use than other motor vehicles. Repairs typically take more time to complete due to the coordination required between various component manufacturers. Further, the time and resources allocated by the department to an RV arbitration proceeding is generally several times what is normally required.

B. EFFECT OF PROPOSED CHANGES:

■ **Modifications to Lemon Law Process**

The bill makes the distribution of consumer rights information more efficient by making the dealer ultimately responsible for provision of a written statement at vehicle delivery. Manufacturers are given expanded options to provide a replacement vehicle by a revised definition of "reasonably equivalent," i.e., a vehicle with a manufacturer's suggested retail price (MSRP) of up to 105% of the original vehicle's MSRP. The definition of trade-in amounts is clarified by making reference to the NADA Official Used Car Guide. Also, a clarification to the definition of authorized service agent is provided for recreational vehicles in s. 681.102(1), F.S.

■ **Recreational Vehicles**

The bill provides that it is not within the Legislature's intent for the owner of a vehicle built by multiple manufacturers, i.e., RVs, to establish a reasonable number of attempts as to each manufacturer, s. 681.101, F.S. Numerous revisions are made affecting the rights of recreational vehicle owners and manufacturers. A manufacturer now expressly includes one who manufactures or assembles recreational vehicle chassis, s. 681.102(14), F.S. The "offset for use" formula is modified to reflect the lower mileages of recreational vehicles, s. 681.102(20), F.S.; in addition, a definition for RV is provided in s. 681.102(20), F.S.

The time allowed to fix a nonconformity is expanded to 45 days under s. 681.104(1)(a), F.S., which will allow the manufacturer more time to make repairs before the dispute is submitted to alternate resolution procedures. Under s. 681.104(3)(b), F.S., an analogous provision increases the number of out of service days to 60 before a reasonable number of attempts is presumed.

■ **Pilot RV Mediation and Arbitration Program**

Section 681.1096, F.S., creates a mediation and arbitration program for disputes arising out of recreational vehicle repair. The cost effectiveness and efficiency of

the program will be reported annually to the Legislature by the AG. The program will remain in effect until September 30, 2001, at which time RV disputes will follow the procedures in ss. 681.109 and 681.1095, F.S. The pilot program must be deemed qualified and monitored for compliance with chapter 681, F.S., by the Department of Legal Affairs. The pilot program reduces the maximum time for the arbitration process from 100 to 70 days.

Section 681.1097, F.S., outlines the procedures for establishing dispute eligibility under the pilot program. Consumers must submit RV disputes to the department to determine eligibility for relief under chapter 681, F.S. Manufacturers will be required to pay the costs of the professional mediators and arbitrators employed in the program.

■ Other Modifications

Under subsections (1) and (4) of s. 681.109, F.S., the period in which the consumer must file with a certified procedure or submit to arbitration is shortened to 60 days from 6 months after the expiration of the Lemon Law rights period, thereby requiring consumers to file complaints more expeditiously. Hearings conducted by the board will now require a majority vote to effect a decision, s. 681.1095(2), F.S. In addition, s. 681.1095(10), F.S., is revised to clarify where an appeal may be filed; and further, the appealing party is now required to furnish the department with notice of the appeal disposition within 30 days, s. 681.1095(12), F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill allows the privatization of mediation and arbitration relating to RV disputes.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Mediation and arbitration responsibilities relating to RV disputes are passed along to private entities.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Consumers continue to pay a \$2 fee to vehicle manufacturers at the time of purchase.

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4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 681.101, F.S., to clarify legislative intent with regard to motor vehicles built or assembled by multiple manufacturers.

Section 2. Amends s. 681.102, F.S., to clarify the definition of "authorized service agent" as it relates to recreation vehicles; provides a definition for "department"; extends the Lemon Law rights period to 24 months regardless of vehicle mileage; clarifies the definition of "lessee cost"; modifies the definition of "manufacturer"; provides a broader definition of "motor vehicle"; provides a definition for "program"; modifies the definition of "purchase price" and "reasonable offset for use"; provides a definition for "recreational vehicle"; and modifies the definition for "replacement motor vehicle."

Section 3. Amends s. 681.103, F.S., to specify a vehicle manufacturer's duty to make repairs during the Lemon Law rights period; requires manufacturers and dealers to provide a written statement of consumer rights at the time of acquisition; and provides what actions constitute prima facie evidence of compliance.

Section 4. Amends s. 681.104, F.S., to allow recreational vehicle manufacturers 45 days after receiving notice from the consumer to conform the vehicle to its warranty; provides that a reasonable number of attempts to repair a recreational vehicle is presumed after being out of service for 60 or more days; and deletes a provision extending the Lemon Law rights period.

Section 5. Amends s. 681.109, F.S., to require that if a manufacturer has a certified procedure, consumer claims must be filed within 60 days after expiration of the Lemon Law rights period; provides that a request for arbitration be made within 60 days following expiration of Lemon Law rights period; and authorizes the department to adopt rules to carry out the provisions of this section.

Section 6. Amends s. 681.1095, F.S., to provide that the Attorney General may establish as many regions of the Florida New Motor Vehicle Arbitration Board as required; provides that hearing panels shall consist of three board members and

decisions will require a majority vote; provides that each region of the board shall consist of up to eight members; removes Attorney General's authority to appoint additional members; provides for continuance of a hearing if certain conditions are met; requires that appeal petition be filed in the county of the consumer's residence, the vehicle's acquisition, or the location of the arbitration hearing; provides that compulsory arbitration under s. 681.109, F.S., and dispute eligibility screening by the division are exempt from chapter 120, F.S.; and requires that appealing party notify department within 30 days of disposition and furnish copy of order or judgment upon request.

Section 7. Creates s. 681.1096, F.S., to establish the Pilot RV Mediation and Arbitration Program, applying to RVs acquired on or after October 1, 1997, and remaining in effect until September 30, 2001; provides eligibility and reporting requirements; provides arbitration and mediation participation requirements for RV manufacturers; provides minimum requirements of mediation and arbitration programs; provides alternative arbitration requirements in the event program is determined to be unqualified for recreational vehicles; provides that manufacturer shall be notified of unqualified program and informed of entitlement to hearing; exempts program administrators, mediators, and arbitrators from civil liability for specified acts under this chapter; provides requirements relating to record maintenance; and provides department with authority to adopt rules.

Section 8. Creates s. 681.1097, F.S., to provide for dispute eligibility and function of program; requires consumer with RV dispute to submit dispute to department before resort to civil action and to provide that consumer is not required to resort to certified program or arbitration; provides that program application must be filed by consumer within 60 days after expiration of Lemon Law rights period; provides responsibilities of consumer and department relative to program applications; provides mediation requirements and mandatory mediation for both consumer and manufacturer, unless dispute is settled prior to mediation conference; provides for an arbitration hearing and procedures in the event of a mediation impasse or if manufacturer fails to comply with agreed upon settlement; provides that, unless otherwise provided, certain provisions in this section are exempt from chapter 120; provides application procedures for orders to confirm, vacate, modify, or correct arbitration awards; and gives department authority to adopt rules to carry out this section's provisions.

Section 9. Amends s. 681.113, F.S., to provide that dealer liability may be incurred under ss. 681.103(3) and 681.114(2), F.S.

Section 10. Amends s. 681.114, F.S., to require notice and reporting to the department in the event of vehicle transfer or disposal.

Section 11. Amends s. 319.14, F.S., to include within the definition of "settlement" an agreement reached after a dispute is submitted to a program.

Section 12. Provides that this act shall take effect upon becoming law, and shall apply to all motor vehicles acquired on or after October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

In the aggregate, this bill does not reduce municipality or county authority to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This bill reflects a variety of consensus proposals that resulted from a series of workshops sponsored by the Attorney General's Office during the 1996 interim. Workshop participants included vehicle manufacturers, dealers, representatives of the RV industry, the Division of Consumer Services, consumers, and various consumer groups.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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